

**MEMO ENDORSED**

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STATE OF NEW YORK

## OFFICE OF THE ATTORNEY GENERAL

February 12, 2008

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ANDREW M. CUOMO  
Attorney General

Hon. Kenneth M. Karas  
United States District Court  
300 Quarropas Street  
White Plains, NY 10601  
VIA FED EX

LESLIE G. LEACH  
Executive Deputy Attorney General  
Division of State Counsel

JUNE DUFFY  
Assistant Attorney General in Charge  
Litigation Bureau

Re: Furlong v. Gibson, 07 Civ. 3825 (KMK) (GAY)  
Heitzner v. Gibson, 07 Civ. 6699 (KMK) (GAY)

Dear Judge Karas:

This office represents the defendant, Kumiki Gibson, the Commissioner of the New York State Division of Human Rights (“the Division”), who is sued in her individual capacity in the above referenced actions. I write pursuant to Your Honor’s direction at the pre-motion conferences held on February 6, 2008, to inform the Court whether defendant will proceed with a motion to dismiss in these cases. While defendant maintains that these actions are baseless, and is confident that the cases will ultimately be shown to have no merit, defendant has decided after careful consideration not to move to dismiss the complaints.

As the Court is aware, in both of the above actions two former Deputy Commissioners who were appointed during former Governor Pataki’s tenure have sued Commissioner Gibson under 42 U.S.C. §§ 1981 and 1983. Plaintiffs claim that their terminations shortly after Commissioner Gibson took office were based on their race. The only fact plaintiffs allege in support of this claim, after twice amending the complaints, is that Commissioner Gibson stated that “she intends to diversify the Division workplace.” This allegation is insufficient to support any inference of racial discrimination. Indeed, the only reasonable inference is precisely the opposite - that the Commissioner is committed to having employees of all races at the Division. Nonetheless, after carefully considering the discussion at the pre-motion conference, defendant will forego moving to dismiss the complaints at this time. Defendant is confident that the evidence will show that both plaintiffs were not terminated due to their race, but because the Commissioner, in her discretion, sought to build a staff willing and able to be part of her efforts to reform and improve the agency to comply with the statutory and fiduciary obligations to the State of New York.

Respectfully submitted,  
*Barbara K. Hathaway*  
 Barbara K. Hathaway  
 Assistant Attorney General

*Conferences scheduled  
 for 3/11/08 at  
 2:45 p.m.*

**SO ORDERED****KENNETH M. KARAS U.S.D.J.***2/25/08*

cc: Drita Nicaj, Esq. (Via Fed Ex)